

HUMAN SERVICES BOARD

INTRODUCTION

The issue is whether the findings of the Family Court are binding on the Board as a matter of collateral estoppel.

DISCUSSION

The Department for Children and Families is required by statute to investigate reports of child abuse and to maintain a registry of all investigations unless the reported facts are unsubstantiated. 33 V.S.A. §§ 4914, 4915, and 4916.

The pertinent sections of 33 V.S.A. § 4912 define abuse and harm as follows:

(2) An "abused or neglected child" means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. An "abused or neglected child" also means a child who is sexually abused or at substantial risk of sexual abuse by any person.

(3) "Harm" can occur by:

. . .

(B) Failure to supply the child with adequate food, clothing, shelter, or health care. For the purposes of this subchapter, "adequate health care" includes any medical or nonmedical remedial health care permitted or authorized under state law. Notwithstanding that a child might be found without proper parental care under chapter 55 of Title 33, a parent or other person responsible for a child's care legitimately practicing his or her religious beliefs who thereby does not provide specified medical treatment for a child shall not be considered neglectful for that reason alone;

. . .

The child (J.L.) in this matter was the subject of a CHINS petition filed on his behalf by the Department on or

about March 2, 2009. J.L. was four years old in March 2009. He is now five years old.

A contested merits hearing was held on June 19, 2009. The petitioner was represented by counsel.

At the close of the contested merits hearing, Judge C.R. made the following findings on the record:

- a. Petitioner had a friend drop off J.L. with D.B. on or about February 10, 2009 when petitioner was incarcerated. Petitioner did not provide D.B. with authorization to seek medical and dental care on behalf of J.L. D.B. did not have the legal authority to care for J.L. because D.B.'s paternity had not been established at that time.
- b. J.L. had a serious dental condition that required immediate care. He had a hole in his teeth. He had cavities in each of his teeth causing him pain and making it difficult for him to eat. J.L. needed ten dental appointments to fix these problems.
- c. Petitioner demonstrated very little knowledge about the condition of J.L.'s teeth. Petitioner testified that J.L. only complained of his teeth hurting once and she told J.L. to brush his teeth. Petitioner stopped taking J.L. to the dentist in 2007 because J.L. misbehaved at the dentist's office in her presence. The court did not find petitioner's testimony credible that J.L. did not complain about his teeth hurting or that J.L. had difficulty eating in light of the testimony from other witnesses about J.L.'s apparent dental problems.

Based on the above findings, the Court found that J.L. was a child in need of care and supervision. There is no indication from the materials supplied by the Department that

the petitioner has ever appealed or contested the findings from the Family Court proceeding.

On March 26, 2009, the Department issued a Notice of Substantiation that petitioner neglected J.L. A Review Meeting was held on June 22, 2009 and the Department issued a Review of Substantiation dated August 25, 2009 upholding the substantiation for neglect. Petitioner filed a timely request for fair hearing.

Although the petitioner has not filed a response to the Department's Motion, the Board needs to consider the merits of the Department's Motion.

The Board has long recognized the doctrine of collateral estoppel and has relied on the test articulated in Trepanier v. Styles, 155 Vt. 259, 265 (1990), to determine whether the Board is precluded by the findings in a prior court proceeding from making its own findings in an case. Fair Hearing Numbers 11,444; 13,432; 20,476 and Y-01/08-05. The Trepanier ruling set out the following criteria at page 265:

- (1) preclusion is asserted against one who was a party or in privity with a party in the earlier action;
- (2) the issue was resolved by a final judgment on the merits.
- (3) the issue is the same as the one raised in the later action.

(4) there was a full and fair opportunity to litigate the issue in the earlier action; and

(5) applying preclusion in the action is fair.

See also Alpine Haven Property Owners Assn., Inc. v. Deptula, 175 Vt. 559 (E.O. 2003).

In this matter, the petitioner was a party to the Family Court proceedings that resulted in a final decision on the merits after a contested evidentiary hearing. The issue before the Family Court is the same issue that is now before the Board; namely, whether the petitioner neglected her child's dental needs. The petitioner was represented in the Family Court proceeding. She not only had a full and fair opportunity to litigate the issue in the Family Court, but she availed herself of that opportunity.

The last factor is whether applying collateral estoppel is fair. A "child in need of care and supervision" includes a child who "is without proper parental care or subsistence, education, medical, or other care necessary for the child's well-being". 33 V.S.A. § 5502(a)(12(B)). The evidence supporting the Family Court decision mirror the factors supporting substantiation based on harm caused by neglect.

Based on the foregoing, summary judgment based on collateral estoppel is appropriate.

ORDER

The Department's Motion for Summary Judgment is granted, and the Department's decision to substantiate petitioner for harm to her son by neglecting his health needs is affirmed.

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